

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4775

IN THE MATTER OF:

Served February 27, 1996

Investigation of Unauthorized)
Operations of SPARTEN TOURS, INC.,)
aka SPARTEN TOURS, SPARTEN BUS)
TOURS, INC., and SPARTEN BUS WORLD)

Case No. MP-96-03

This investigation was initiated in Order No. 4729, served January 4, 1996. Respondent was ordered to show cause why a civil forfeiture should not be assessed with respect to its operations in the Metropolitan District from June 1995 through November 1995, as evidenced by several of respondent's driver time sheets and group charter itineraries that the Commission obtained from the Federal Highway Administration (FHWA). The FHWA obtained these records during a recent audit of respondent's operations and forwarded them to the Commission pursuant to a cooperative agreement executed September 28, 1971, under Public Law No. 89-170.

Article XI, Section 6, of the Compact provides that a person may not engage in transportation subject to the Compact unless there is in force a certificate of authority issued by the Commission authorizing the person to engage in that transportation. Article XI, Section 1, of the Compact states that the Compact applies to transportation of passengers for hire between points in the Metropolitan District. According to respondent's records, respondent transported passengers for hire between points in the Metropolitan District on nine separate occasions from June 1995 through November 1995. Respondent has no authority from this Commission to perform such transportation. Respondent claims that six of the trips qualify for the school transportation exemption in Article XI, Section 3(d), of the Compact,¹ and that two qualify for the intra-Virginia transportation exemption in Section 3(g).

Article XI, Section 3(d), of the Compact excludes from our jurisdiction transportation by a motor vehicle employed solely in transporting teachers and school children through grade 12 to or from public or private schools. The phrase "to or from ... schools" includes "transportation to or from any place where such transportation is directly connected with and contributes to the

¹ Respondent also claims that one of these six trips should be exempt because the transportation was rendered under contract with the Library of Congress, a branch of the federal government. Transportation performed by the federal government is exempt from regulation under the Compact, but transportation performed by a private carrier contracting with the federal government is not. In re Omnibus Corp., No. 380, Order No. 1785 (Dec. 22, 1977) (on reconsideration); McMichael School Bus Serv., Inc. v. Omnibus Corp., No. 367, Order No. 1686 (May 13, 1977).

educational development of school children."² Transportation of school children and others under a contract with 4-H or similar nonprofit foundation, however, has been held not to fall within the exclusion, notwithstanding the underlying educational purpose.³ The "employed solely" test must be met at all times, not just when the vehicle in question is being used as a school bus.⁴ Hence, transportation of students and teachers to and from school in a vehicle used for nonexempt purposes is subject to regulation by the Commission and requires a certificate of authority.⁵

Only three of the six trips claimed to be exempt under Section 3(d) are alleged to involve transportation of students and teachers through grade 12. Of those three, two involved transportation in a vehicle not used solely for exempt purposes.⁶ Only one of the three was conducted under the auspices of a qualifying school in a vehicle which, on the evidence before us, was used solely in exempt operations. Although this latter trip to a college fair was paid for by a university, the trip occurred on a school day during school hours, originated and ended at a public high school and involved teachers, as well as students, and because it is reasonable to infer that one of the purposes for attending the fair was to obtain a clear understanding of the university's entrance requirements so that at least some of the students could plan their remaining high school curriculum, this trip may be viewed as a school activity within the exclusion. Furthermore, although respondent's records show that the vehicle used for this trip also was used for non-school transportation on another occasion, the non-school transportation took place entirely within Virginia.

As for the two trips claimed to be exempt under Section 3(g), only one qualifies. Section 3(g) excludes from our jurisdiction transportation solely within the Commonwealth of Virginia. According to respondent's records, one of the Virginia trips was between Arlington and Alexandria via the George Washington Memorial Parkway. The parkway traverses Columbia Island between those two points. Columbia Island is a point in the District of Columbia. Consequently,

² WMA Transit Co. v. Owens, No. 38, Order No. 321 (Oct. 22, 1963).

³ In re Tara Lines, Inc., No. CP-79-06, Order No. 2059 (Nov. 21, 1979); McMichael School Bus Serv., Inc. v. Omnibus Corp., No. 367, Order No. 1686 (May 13, 1977).

⁴ D.C. Transit Sys., Inc. v. WMA Transit Co., No. 96, Order No. 521 (Sept. 2, 1965).

⁵ In re McLean Transp. Serv., Inc., No. AP-87-22, Order No. 3122 (Feb. 2, 1988); In re Yellow Bus Lines, Inc., No. AP-81-09, Order No. 2243 (July 27, 1981); In re Yellow Bus Lines, Inc., No. AP-79-14, Order No. 2083 at 7 (Feb. 20, 1980) (citing In re McMichael School Bus Serv., Inc., No. 318, Order No. 1593 (Aug. 13, 1976)).

⁶ In addition, one of these two involved transportation under contract with the Future Farmers of America, a nonprofit organization similar to 4-H.

the trip from Arlington to Alexandria, via Columbia Island falls within our jurisdiction.⁷ Respondent's records tend to support its claim that the other Virginia trip did take place solely within Virginia. That trip falls outside our jurisdiction under Section 3(g).

Article XIII, Section 6(f), provides that a person who knowingly and willfully violates a provision of the Compact shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation and that each day of the violation constitutes a separate violation. The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁸ "Willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.⁹

The Commission's records indicate that respondent was aware, or should have been aware, that it could not lawfully operate in the Metropolitan District without operating authority from this Commission. Respondent was granted temporary authority in March 1989.¹⁰ That authority expired June 9, 1989.¹¹ Respondent reapplied for operating authority several times in 1989 and 1991. The applications were unacceptable for filing as submitted and were rejected, but the rejection letters detailed the errors and omissions and advised applicant to reapply upon making the necessary corrections. In February 1993, having reason to believe applicant was still operating in our jurisdiction, the Commission wrote to respondent and reminded respondent that a carrier needs a certificate of authority to transport passengers for hire in the Metropolitan District. Accordingly, we find that respondent's violation of Article XI, Section 6, was knowing and willful within the meaning of the Compact.

We will assess a civil forfeiture against respondent in the amount of \$500 per day, for a total of \$3,500. We will suspend all but \$500 in recognition of respondent's complete cooperation during the investigation.

⁷ In re Madison Limo. Serv., Inc., No. CP-87-06, Order No. 3010 (Apr. 29, 1987); In re Executive Limo. Serv., Inc., No. AP-81-17, Order No. 2239 (June 29, 1981).

⁸ DD Enters., Inc., t/a Beltway Transp. Serv., v. Reston Limo. Serv., No. FC-93-01, Order No. 4226 (Dec. 20, 1993).

⁹ Id.

¹⁰ In re Need for Charter Coach Serv., No. MP-88-37, Order No. 3305 (Mar. 16, 1989).

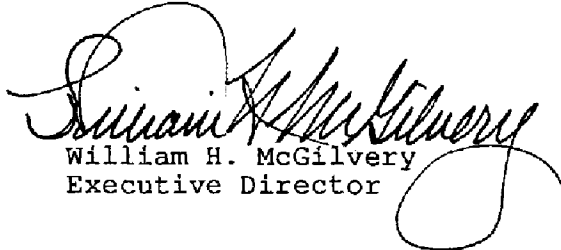
¹¹ Id. at 2.

THEREFORE, IT IS ORDERED:

1. That respondent is hereby directed to cease and desist from transporting passengers for hire between points in the Metropolitan District unless and until otherwise ordered by this Commission.

2. That the Commission hereby assesses a civil forfeiture against respondent in the amount of \$500, for knowing and willful violation of the Compact, and that respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashiers check, the sum of five hundred dollars (\$500).

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER AND LIGON:


William H. McGilvery
Executive Director